



**THE ATTORNEY GENERAL
OF TEXAS**

JOHN BEN SHEPPERD
ATTORNEY GENERAL

AUSTIN 11, TEXAS

August 21, 1953

Hon. H. A. Beckwith
Chairman

Board of Water Engineers
302 West 15th Street
Austin, Texas

Opinion No. S-86

Re: Legality of the Assistant
Secretary of the Board of
Water Engineers to certify
orders and other docu-
ments of the Board and to
assume responsibility as
custodian of the files and
records of such Board.

Dear Mr. Beckwith:

You have requested an opinion of this office
on the following question:

"This Board desires for you to give us
your opinion as to the legality of the As-
sistant Secretary of the Board certifying
to orders, decisions of record, papers, maps
or other documents. Also, can the responsi-
bility as custodian of the files and records
be delegated to the Assistant Secretary of
the Board?"

Subdivisions 6, 7, and 16 of Article 7477,
Vernon's Civil Statutes, as amended by Chapter 357, Acts
of the 53rd Legislature, 1953, p. 874, provide:

"(6) The Board may appoint such other
employees as may be deemed necessary for
the efficient performance of the duties
authorized and required of it by law.

"(7) . . . The Secretary shall be cus-
todian of all files and records of the Board.

". . .

"(16) Upon the application of any per-
son and upon payment of the fees prescribed
therefor in the rules and regulations of the
Board, the Board shall furnish certified copies

of any of its proceedings or other official acts of record, or of any paper, map or document filed in the office of the Board, in connection with the appropriation of water, determination of water rights, or administration of water rights. Such certified copies under the hand of the Chairman or the Secretary, and the seal of the Board shall be admissible in evidence in any court or administrative proceeding, in the same manner and with like effect as the original would be."

Article 7488, V.C.S., provides:

"The Board shall have power to make all needful rules for its government and proceedings; and shall have a seal, the form of which it shall prescribe."

The 53rd Legislature in the General Appropriation Act provides for the employment of a Business Manager and Secretary of the Board and an Assistant Secretary of the Board. The word "assistant" is universally defined as one who aids, helps, or assists, while the word "deputy" is defined as a person appointed to act for another; to substitute; to delegate; an agent; and in the absence of any statutory provisions the assistant never acts officially for the principal. Niall v. State, 129 S.W. 630 (Tex.Crim. 1910). But the fact that a deputy is described in a transaction as an assistant or vice versa will not invalidate his acts. Pierson v. State, 180 S.W. 1080 (Tex.Crim. 1915).

In view of the foregoing, the answer to your question is dependent upon the scope of the employment of the Assistant Secretary by the Board of Water Engineers. If the Assistant Secretary is employed only for the purpose of aiding or assisting the Secretary of the Board, the Assistant Secretary would not be authorized to perform the duties of the Secretary imposed by law. However, if the employment is for the stated purpose of authorizing the Assistant to act for the Secretary of the Board and perform the duties of the Secretary of the Board in the absence of the Secretary, then such assistant would be in fact a "deputy" and would be authorized to certify

orders, decisions of record, papers, maps and other documents, and any other duty imposed on the Secretary, including the responsibility of custodian of the files and records. In other words, the Board of Water Engineers has the authority to prescribe the duties of the Assistant Secretary, and such duties may include those outlined in your request. We are supported in this conclusion by the provisions of Section 1 of Article 3731a, Vernon's Civil Statutes, which provides:

"Any written statement, certificate, record, return or report made by an officer of this state or of any governmental subdivision thereof, or by his deputy or employee, in the performance of the functions of his office shall be, so far as relevant, admitted in the courts of this state as evidence of the matter stated therein, subject to the provisions in Section 3."

SUMMARY

The Board of Water Engineers has authority to prescribe the duties of the Assistant Secretary of the Board, and such duties may include certifying to orders, decisions of record, papers, maps and other documents, and in the absence of the Secretary to authorize the Assistant Secretary to act as custodian of the files and records.

Yours very truly,

APPROVED:

J. C. Davis, Jr.
County Affairs Division

Willis E. Gresham
Reviewer

Robert S. Trotti
First Assistant

JR:am

JOHN BEN SHEPPERD
Attorney General

By 
John Reeves
Assistant